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RIGHTS OF THE CHILD

Letter dated 28 January 1992 from the Permanent Representative of Guatemala to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

The Permanent Mission of Guatemala to the United Nations Office at Geneva requests that the joint report of the Legal Support Office of Casa Alianza (Covenant House) and the Juvenile Division of the Government Procurator's Office concerning criminal acts and offences committed against street children in 1991 should be circulated as an official document of the present session under agenda item 22 "Rights of the child". The Cooperation Agreement for the Defence and Protection of Street Children and Minors who have been Abandoned or are in an Irregular Situation, concluded between the Government Procurator's Office and the Casa Alianza Association, is reproduced in an annex to this report.

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JOINT REPORT OF THE LEGAL SUPPORT OFFICE OF CASA ALIANZA AND THE JUVENILE DIVISION OF THE GOVERNMENT PROCURATOR'S OFFICE CONCERNING CRIMINAL ACTS AND OFFENCES COMMITTED IN 1991 AGAINST "STREET CHILDREN"

Introduction

Guatemala is a country of great contrasts that has a history of more than 30 years of violence, a population that has grown out of all proportion, in which more than a half of all Guatemalans are of Indian origin, and a high percentage of illiteracy; about 89 per cent of the population lack the means for a decent human existence. Added to this gloomy and harsh reality there is a social problem that there has been a reluctance to recognize and, even less, to attempt to deal with, namely, the problem of the "street children", human beings having the same obligations and rights as all Guatemalans who, on top of everything else, have been victims of a fate that has deprived them of a proper family to instil in them the moral principles conducive to a positive attitude towards Guatemalan society. They are children who have also been deprived of the right to be loved and understood to such a point that, faced with the stark reality of their home life and affected by the break-up of the family, hunger, ill-treatment, abuse, abandonment, exploitation in their own family setting and many other factors, they decide to enter a great vicious circle of Guatemalan society, which is practically their only option, namely "the street". In the street they are received by an inhuman, unjust and corrupt community in which misconduct and delinquency become a form of communal existence or a modus vivendi, in which various sectors of the same community give expression to their contempt and rejection on the pretext of defending their property rights through criminal acts ranging from ordinary wounding to the most merciless murder. These are actions that undoubtedly violate the most elementary human rights recognized in the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Political Constitution of the Republic of Guatemala and the Juvenile Code.

To sum up, this juvenile population known as street children has been vilely massacred, tortured and abused in recent years by unscrupulous individuals who have forgotten that these are human beings and have violated their rights as embodied and universally recognized in various legal instruments that have been accepted and ratified by the State of Guatemala.

Definition and origin of the problem of the street children

For the purposes of this report, we shall consider that street children are those minors mainly frequenting urban areas who have tenuous family ties or none at all; they develop the cunning and facility to survive outside the family, which may or may not exist, making of the street the main element in which they grow up and interrelate socially.

For children living under these conditions, life in the street is subject to continuous change until they reach adulthood; if for any reason they temporarily abandon the streets, it is because they are fleetingly passing through police units, stations and substations, State juvenile rehabilitation centres and/or young people's hostels. However, they return to the streets, mainly because of the shortcomings of the programmes for the guidance and

management of children at risk, which do not offer them the opportunity of finding another real option corresponding to the concern that they feel as human beings. In practice, therefore, they are obliged by the shortcomings of State institutions to seek their only alternative, which is the street.

In the case of Guatemala, the street children are a social phenomenon that goes back to the past, the product of an economic system that has subsisted with few changes throughout the century. This situation has given rise to the existence of marginalized and generally impoverished sectors of the population, as a result of which most Guatemalan families have no means of access to rural or urban housing - a fact which tends to make the housing problem more acute. The natural result is that these family units break up for lack of stability and, when they do so, the process is initiated whereby children live in the imminent danger constituted by the city streets.

Background to violations of the human rights of the street children

In 1990 the juvenile population known as street children was exposed to a series of harassments, torture, homicides, murders, abuses of authority and various types of physical assault. This situation led the institutions concerned with the welfare of children to begin to document these incidents and to make local complaints about them. Subsequently, international bodies concerned with observance and respect for human rights energetically condemned the State security organs in Guatemala as being responsible for most of these actions, which undoubtedly caused some concern to the Government of Mr. Marco Vinicio Cerezo Arévalo.

Nevertheless, very little attempt was made to change the attitude of elements in the Guatemalan Security Police. On the contrary, given the lack of political will, these illegal acts against the street children were intensified, putting them in danger on a great many occasions.

Situation of the street children in 1991

In the course of 1991, Casa Alianza and the Juvenile Division of the Government Procurator's Office succeeded in reporting or instituting criminal proceedings for 36 violations of the human rights of street children, and were able to establish that the number of known crimes had been greater in 1991 than in the previous year. To form a better impression of the incidence of reported cases, please refer to the annex, which gives the statistics for 1990 and 1991 on offences, persons charged and number of cases.

It is important to note that the four homicides reported in this year were committed by private individuals and that no killing of street children by law-enforcement officers was reported. Furthermore, offences involving abuse of authority by the security forces decreased, as can be seen in the annex. It is our opinion that, with a little more effort, this type of offence can be eradicated.

In the course of 1991, "persons unknown in civilian dress" were involved in two abductions and nine abductions with bodily injury of street children

and teenagers, criminal acts that had not been reported in the previous year and may indicate a new type of humiliation for the most vulnerable children of Guatemalan society.

Lastly, it is important to mention that the buildings of Casa Alianza's Crisis Centre were fired on by persons unknown, and that members of its staff were threatened.

A number of activities have been carried out in the context of the efforts made by the various State institutions concerned with the problem of street children with the basic aim of decreasing the violence that the children have been suffering in the streets. Notwithstanding this interest, some street children were victims of various criminal acts and offences, most of which were committed by private individuals, the public security forces have in fact changed their attitude and conformed to the procedures that the law lays down for the treatment of street children. There are nevertheless, some elements in the public security forces that, ignoring the role they should be playing, have acted outside the law and committed acts that violate the fundamental rights of the child.

Under the Government of Mr. Jorge Serrano Elias, the political will to restore, provide for and protect the fundamental rights of the street children has been manifested through its various departments (Government Procurator's Office, Ministry of the Interior, etc.). It is nevertheless considered advisable that all those institutions that have a legal obligation to watch over, protect and defend children in an irregular situation should receive support that provides a material basis for the moves towards change, given that they currently lack the manpower and equipment resources that would really enable them to tackle the rehabilitation, integration and defence of minors in an irregular situation. As has been pointed out, various State institutions are concerned to solve the problem of the street children, in which context there has been a series of (public and private) inter-agency meetings, the terms of reference of which were to analyse the task, and the strengths and weaknesses, of each particular institution. This stocktaking has yielded the following results:

A. National Police: Arising from the various meetings with commissioners of police and chiefs of police, it has been established that National Police officers have improved their behaviour in following the legally established procedures for arresting, transporting and handing over to the juvenile courts minors in an irregular situation or taken into custody for any other reason. Despite this fact, there have been isolated cases of minors being held for a long time by the police because of ignorance of the law or failure to observe its provisions.

To sum up, it can be stated that there is goodwill on the part of the National Police to make a positive shift in their relations with the street children. Also, as a result of discussions that have taken place at top level with the National Police, attention has begun to be paid to the carrying out of court orders for the arrest of accused officers in the various criminal cases in progress and those that have been pending for some months. There is

a need to proceed to arrest elements whose actions detract from the work of an entire public security force, in order to provide tangible evidence of the change of direction decided upon by the present Chief of the National Police.

Lastly, we consider it to be an essential area of work for the National Police to proceed with as little delay as possible to carry out the inquiries or investigations needed to establish the innocence or guilt of persons accused of criminal acts against street children in every individual court.

B. The Coordinating Juvenile Court and juvenile courts: From an analysis of the work done by the Coordinating Juvenile Court it is apparent that it is in many instances failing to comply with the provisions of the law. Furthermore, it is important to mention that the Coordinating Juvenile Court, in clear violation of article 22 (2) of the Juvenile Code, has very frequently delegated the supervision of institutions concerned with juveniles to low-ranking employees, whereas the law stipulates that such supervision is a specific duty of office. In so doing it has violated the principle of immediacy of proceedings or actions in cases of juveniles in an irregular situation, which is applicable as laid down in the relevant law.

On the other hand, the Court has taken measures or given rulings that are prejudicial to the image of bodies dedicated to protecting street children, a fact that has also been condemned internationally as an action in excess of its legal powers.

Without going into details of each particular case, it is important to draw attention to the fact that the opinions handed down by the Coordinating Juvenile Court have on several occasions been at variance with the principle of guardianship, which is essentially intended to provide full protection to children. It should be noted that its function is an unimportant one, having regard to the fact that it does not have any defined coordination policies vis-à-vis the programmes of the State institutions concerned with the care of children at risk.

With some exceptions the juvenile courts are carrying out their functions. The comment may be made that the staff have a lack of interest in speeding up proceedings concerning juveniles in an irregular situation, which is undoubtedly prejudicial and places many children in danger; another practice worthy of mention is that minors are not classified according to their conduct. Because of this, many minors who have no previous criminal record are in practice dealt with and confined in the same centres without any discrimination.

C. Presidential Secretariat for Social Welfare and juvenile management and guidance centres: It is important to point out in relation to this State institution that its supreme authority is totally involved at the present time in carrying out administrative restructuring, completely forgetting the work that the Department for the Management and Guidance of Minors ought to be carrying out. As a result of this situation, all the centres remain greatly run down and do not fulfil the purposes for which they were set up, so much so that in 1991, according to the Third Juvenile Court Judge, 628 out of 799 children in an irregular situation (78.6 per cent) sent to these centres by the courts escaped. Consequently, only 21.4 per cent appeared for the

legal proceedings. This fact has an unspeakable result, because it places children in greater risk or danger: any wronged person noting the presence of such a child almost immediately in the places frequented by juvenile offenders takes action and decides to take the law into his own hands. Likewise, children do not receive the re-education they need in order to change their anti-social attitude.

D. Juvenile Division of the Government Procurator's Office: Under the law, this institution is obliged to uphold respect for the rights of children and ensure the efficient and rigorous application of the Juvenile Code, to represent minors who find themselves in an irregular situation and undertake their legal defence and, in addition, to bring charges in the ordinary courts against adults who have committed acts prejudicial to the personal integrity of minors.

Unfortunately, in practice, these legal duties are not carried out properly owing to lack of manpower and equipment resources; in order to carry out its guardianship function it would have to have 15 lawyers, as well as auxiliary staff for the areas of psychology, social services and investigation. Likewise, this institution should have transport units, computer facilities and office equipment, the resources for which are limited at the present time; this is holding it back and preventing its legal action from securing the results which Guatemalan society hopes for and needs.

Inter-agency action to solve the problem of the street children

The State of Guatemala, in accordance with the provisions of the Guatemalan Constitution, subscribes to the principle that the organization of the State is essentially aimed at the full implementation of human rights. To this end it protects the individual and the family as the fundamental unit of society, guaranteeing and protecting human life as from the time of conception, and the integrity and security of the individual, on bases of equality, freedom and justice, which constitute the fundamental pillars for the achievement of peace and development, both social and individual.

These legal principles which underlie our Constitution are in practice impossible to put into effect, especially in the case of the so-called street-children sector; in 1991 again these children were victims of homicides, abuses of authority, assault, abduction and other criminal acts. Nevertheless, in the State organs of the Office of the President of the Republic, the Ministry of the Interior and especially the Government Procurator's Office, there was a keen interest in solving the problem of the street children.

Mr. Jorge Serrano Elías, as President of the Republic of Guatemala, visited Covenant House (Casa Alianza) in New York at the express invitation of Sister Mary Rose McGeady in her capacity of Chairman of the Association. On this occasion cooperation agreements were concluded; all these activities bore the imprint of the human qualities of Mr. Acisclo Valladares Molina, Attorney-General of the Nation and Chief of the Government Procurator's Office. This official diligently presented a Cooperation Agreement with the

aim of enabling the Casa Alianza Association and Juvenile Division of the Government Procurator's Office to combine their efforts in order to achieve proper protection for the fundamental rights of the street children. This approach was given practical form through the signing of the Agreement, which took place in auspicious cicumstances.

The Ministry of the Interior organized inter-agency meetings to deal with the social problem of the street children and gave general guidance to the Directorate-General of the National Police in order to promote the spirit of the protection and defence of human rights.

We accordingly consider that to this political will should be added a readiness to give effect to the full implementation of human rights in Guatemala. To this end the various departments concerned by this problem need support in order that they may improve the quality of programmes for the guidance, treatment and defence of minors. Failing this, any effort will be unavailing and will make it difficult to eliminate this social phenomenon once and for all.

CONCLUSIONS

A. The phenomenon of the street children is a product of the serious economic and social vicissitudes suffered by the Guatemalan people; this has meant that the family, as the fundamental unit of society, has been afflicted by destitution, poverty and break-up, among other things.

B. In 1991, the criminal acts committed against street children did not decline in number. Nevertheless, the public security forces were found to be less arbitrary in their actions, which in most cases were in conformity with the procedures established by law.

C. It is apparent from the various illegal acts against street children in 1991 that most were committed by private individuals who, because of their method of action, may in some cases be assumed to be members of the State security forces acting in a personal capacity.

D. As to the acts which constituted a violation of the right to life of a number of street children in 1991, these were not committed by members of the National Police or any other State police force, but were attributable to a gang of criminals, a vigilante group, a private individual and another person who has proved impossible to identify.

E. There is a political will on the part of the State of Guatemala, through the President of the Republic, the Government Procurator's Office, the Ministry of the Interior, the National Police and other governmental agencies, to undertake all actions intended to give effect to, and ensure respect for, the fundamental rights of street children.

F. It is imperative that the State of Guatemala should provide to all the governmental entities giving protection to children the resources necessary to enable them to fulfil their specific mission from the social standpoint and in accordance with their responsibilities as established by law. By these means the problem of the street children will be speedily resolved once and for all.

RECOMMENDATIONS

1. International support and assistance are needed in order to ensure respect for the human rights of the street children, not only with regard to the prevention of direct attacks but also for the purposes of the implementation of programmes to resolve the problem.

2. There is an obvious need for the State of Guatemala to launch a campaign to secure financial assistance from international organizations so as to enable the Casa Alianza Association to broaden its action in support of street children from the provinces.

3. It is important that the Government Procurator's Office, through its Juvenile Division, should be seized of all cases of irresponsible paternity and adoption, with the aim of reducing the incidence of children leaving their family units.

4. There is an urgent need for the State of Guatemala to launch preventive campaigns and campaigns to ensure respect for the fundamental rights of children, in order to prevent citizens from infringing the various legal instruments for the protection of children.

5. The Congress of the Republic of Guatemala should be urged to admit and discuss, within a reasonable time, the new draft Juvenile Code in order that it may be approved, sanctioned and promulgated in accordance with the law; this instrument will have favourable repercussions for Guatemalan children who are at present at risk.

6. In the short term, the Juvenile Division of the Government Procurator's Office should have available to it human and material resources to enable it effectively to discharge the functions and responsibilities established by law.

7. Within the Office of the President, the Social Welfare Secretariat should increase the budget of the Department for the Treatment and Management of Minors in order to put into practice programmes which genuinely discharge its task of solving the problem of children in an irregular situation.

8. The Coordinating Juvenile Court should evaluate its activities and genuinely seek to discharge its responsibility for coordination as conferred on it by law. To this end it should devise, programme and implement plans to assist children in an irregular situation.

(Signed) Eugenia de Monterroso
National Director
Casa Alianza Association

(Signed) Eunice Lima S.
Procurator for Minors
Government Procurator's Office

(Signed) Edgar Raúl Toledo Urrutia
Coordinator, Legal Support Office
Casa Alianza Asociación

CASA ALIANZA ASSOCIATION

LEGAL SUPPORT OFFICE

Number of cases being processed, offences and persons charged, January-December 1991

Category		1991
A.	NUMBER OF CASES	36
B.	OFFENCES	
1.	Abuse of authority	4
2.	Abuse of authority and bodily injury	3
3.	Threats	1
4.	Assault	1
5.	Coercion	1
6.	Rape by means of deception	1
7.	Homicide	4
8.	Bodily injury through use of a firearm	3
9.	Bodily injury	5
10.	Abduction	2
11.	Abduction and bodily injury	9
12.	Servitude	1
13.	Illegal traffic in medicines and narcotics	1
	TOTAL	36
C.	PERSONS CHARGED	
1.	Member of military police flying squad	1
2.	National Police officers	7
3.	Members of a vigilante group	2
4.	Member of a military unit (G-2)	1
5.	Private individuals	25
	TOTAL	36

Annex

COOPERATION AGREEMENT FOR THE DEFENCE AND PROTECTION OF STREET CHILDREN AND MINORS WHO HAVE BEEN ABANDONED OR ARE IN AN IRREGULAR SITUATION

CONSIDERING:

That in all the measures concerning children taken by the public or private social welfare institutions, the courts, the administrative authorities or the legislative organs, attention must be given to the best interests of the children above all else,

CONSIDERING:

That the State of Guatemala has been organized to protect the individual and the family and has to protect the physical, mental and moral health of minors, guaranteeing them their right to food, health, education, security and social welfare, and that it is the responsibility of the Government Procurator's Office provisionally to represent minors for as long as they have no lawful representative and to initiate the relevant action whenever they have been wronged,

CONSIDERING:

That it is the responsibility of the Government Procurator's Office to exercise procuratorship over children, upholding respect for their rights and ensuring the efficient and rigorous application of the Juvenile Code, to represent minors when they find themselves in an irregular situation and undertake their legal defence, and to bring charges in the ordinary courts against adults who have committed acts prejudicial to the personal integrity of minors,

CONSIDERING:

That the State recognizes that, for the purposes of the full protection of children, the participation not only of the public sector but of the communal organizations and private social welfare institutions and of society as a whole is necessary,

CONSIDERING:

That the Casa Alianza Association has as one of its statutory objectives the prevention of the maltreatment of children, and endeavours at all times to provide them with moral, spiritual and material support,

CONSIDERING:

That in order to achieve the aims of the State entrusted to the Juvenile Division of the Government Procurator's Office and the goals which Casa Alianza has set itself in accordance with the laws of the land, it is advisable that there should be mutual collaboration between them for the benefit of Guatemalan children,

ACCORDINGLY:

On the basis of the above considerations and the provisions of articles 3 and 4 of the Convention on the Rights of the Child, articles 1, 2, 46, 51 and 251 of the Guatemalan Constitution, article 14 of the Juvenile Code, article 1 of the Government Procurator's Office Organization Act, and articles 4 and 5 of the Statutes of the Casa Alianza Association,

We, on the one hand, Acisclo Valladares Molina, aged 44, Guatemalan, lawyer and notary, domiciled in this place, representing the State of Guatemala, which was organized by the Political Constitution of the Republic promulgated by the Constituent National Assembly on 31 May 1985, in my capacity as Attorney-General of the Nation and Chief of the Government Procurator's Office, which capacity I accredit by means of the attestations of my appointment and assumption of office,

And, on the other hand, Zoila Eugenia de Monterroso, aged 40, married, Guatemalan, graduate, domiciled in this place, legally representing the Casa Alianza Association, an entity duly approved and entered in the Civil Register, in my capacity as Chairman of the Board and Legal Representative of the Board, which I accredit by means of the notarized record of my appointment, authorized by the notary Luis Enrique González Villatoro, in the city of Antigua Guatemala on 23 April 1991, entered in the Civil Register under 7-90 on pages 9 and 10 of the first book registering juridical persons of a civil nature, in the capacity with which we act, hereby conclude the following

COOPERATION AGREEMENT FOR THE DEFENCE AND PROTECTION OF STREET CHILDREN AND MINORS WHO HAVE BEEN ABANDONED OR ARE IN AN IRREGULAR SITUATION,

Which is contained in the following clauses:

FIRST: The Government Procurator's Office, through its Juvenile Division, and Casa Alianza shall jointly implement plans and programmes aimed at the safeguarding and protection of street children and minors who have been abandoned or are in an irregular situation, and the observation, treatment and reintegration of such children where appropriate.

SECOND: The Government Procurator's Office, in agreement with Casa Alianza, shall take the relevant actions vis-à-vis the Juvenile Court for the proper approval of the plans and programmes to be undertaken, together with any actions that may be needed vis-à-vis authorities of any kind for the purposes of the execution of the said plans and programmes.

THIRD: In the exercise of the activities incumbent on the Government Procurator's Office in cases in which minors are involved as injured parties, Casa Alianza, through its Legal Support for Street Children Office, which shall be established as a specific and standing programme, shall act as an auxiliary of the Government Procurator's Office, reporting to it such cases as may come to its attention, conducting investigations and, in general, undertaking any relevant activities or activities requested by the Government Procurator's Office for the more effective discharge of the functions incumbent on it.

FOURTH: The Government Procurator's Office shall provide Casa Alianza's Legal Support for Street Children Office, as its auxiliary, with the necessary legal support to enable it to achieve its purposes and perform any auxiliary work entrusted to it.

FIFTH: The Government Procurator's Office shall, within the technical and financial possibilities of Casa Alianza, promote the participation of this Association in the performance of any observation and analysis functions that may be required in the case of children who have been abandoned or are in an irregular situation.

SIXTH: The Government Procurator's Office shall, within the technical and financial possibilities of Casa Alianza, promote the participation of this Association in the performance of any educational, re-educational and rehabilitation functions that may be required in connection with minors, in accordance with the law.

SEVENTH: The Government Procurator's Office and Casa Alianza shall, by mutual agreement, undertake publicity campaigns to inform Guatemalan society of the existing problem and the work needed in order to tackle it, and of the rights which children possess and the respect which they deserve.

EIGHTH: The present Agreement shall be expanded in due course and constitutes the best expression of will with regard to the common purpose pursued by the parties at the time of signing: that the fundamental rights of the child shall be given full effect in Guatemala and that street children, children who have been abandoned and children in an irregular situation shall receive the support and treatment which are legally appropriate for their own benefit and that of the peace and security of Guatemalan society as a whole.

NINTH: This Agreement shall be valid for 12 months and may be renewed after an evaluation of the work done and the practical results achieved.

We have read the text, and hereby ratify, accept and sign it as the faithful expression of our will.

Done in the city of Guatemala de la Asunción, on 6 November 1991.